

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Master File No. 01-12257-PBS

Subcategory No. 06-11337-PBS  
Civil Action No. 08-cv-10852

THIS DOCUMENT RELATES TO:

*United States of America ex rel. Ven-A-Care of  
the Florida Keys, Inc., by and through its principal  
officers and directors, Zachary T. Bentley and  
T. Mark Jones v. Actavis Mid Atlantic LLC, et al.*

Judge Patti B. Saris

**DEFENDANTS' CROSS-MOTION TO COMPEL  
THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TO  
PRODUCE DEPOSITION TESTIMONY**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendants Actavis MidAtlantic LLC, Alparma USPD Inc. f/k/a Barre National Inc., and Barre Parent Corp. (collectively "Actavis MidAtlantic"); Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc. (collectively "Par"); Sandoz Inc. f/k/a Geneva Pharmaceuticals Inc. ("Sandoz"); and Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. f/k/a Schein Pharmaceutical, Inc. (collectively, "Watson") (together, the "Defendants") respectfully submit this cross-motion to compel the Centers for Medicare and Medicaid Services ("CMS") to produce deposition testimony pursuant to the subpoena served on CMS on April 14, 2011 (the "Subpoena").

The Government moved to quash the Subpoena on May 5, 2011, and Defendants are submitting an opposition to the Government's motion and their cross-motion to compel. As set forth in the accompanying memorandum, the grounds for Defendants' motion are that the Subpoena seeks deposition testimony on relevant topics and the areas of inquiry are reasonable,

narrowly framed, not unduly burdensome, and do not request privileged information. Moreover, the Court should apply Rule 45 in determining Defendants' cross-motion, and even if the Administrative Procedure Act were applicable, the Government's refusal to provide the requested testimony is arbitrary and capricious.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Defendants respectfully request oral argument on the Government's motion and Defendants' cross-motion to compel.

Respectfully Submitted,

Dated: May 19, 2011

By: /s/ Heather K. McDevitt  
Heather K. McDevitt (*pro hac vice*)  
Paul Carberry (*pro hac vice*)  
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*Attorneys for Defendant Sandoz Inc.*

**CERTIFICATION PURSUANT TO LOCAL RULES 7.1 AND 37.1**

I, Heather K. McDevitt, hereby certify that, on behalf of Defendants, counsel for Sandoz have conferred with counsel for the Centers for Medicare and Medicaid Services and have attempted in good faith to resolve or narrow the issues in dispute in the cross-motion. I further certify that the parties have not been able to reach agreement with respect thereto.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing (1) DEFENDANTS' CROSS-MOTION TO COMPEL THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TO PRODUCE DEPOSITION TESTIMONY; and (2) DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR OPPOSITION TO MOTION BY THE UNITED STATES TO QUASH DEPOSITION SUBPOENA TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES AND DEFENDANTS' CROSS-MOTION TO COMPEL together with attached exhibits were delivered to all counsel of record and to counsel of the United States by electronic service in accordance with Paragraph 11 of the Case Management Order No. 2, by sending on May 19, 2011, a copy to Lexis-Nexis for posting and notification to all parties.

/s/ Daniel Cohen  
Daniel Cohen